

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

State of Arizona, ex rel. Thomas C. Horne,)
Attorney General,)
)
Plaintiff,)
)
vs.)
)
The McGraw-Hill Companies, Inc. and)
Standard & Poor's Financial Services, LLC,)
)
Defendants.)
)

2:13-cv-00463 JWS

ORDER AND OPINION

[Re: Motions at docs. 4 & 15]

I. MOTIONS PRESENTED

At docket 4 defendants The McGraw-Hill Companies, Inc. and Standard & Poor's Financial Services, LLC ("S&P") (collectively "Defendants") move to stay proceedings in this case pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") on a motion pending before the JPML to transfer the case at bar and numerous others for coordinated or consolidated pre-trial proceedings pursuant to 28 U.S.C. § 1407. Complicating resolution of the motion to stay is a motion to remand filed at docket 15 by plaintiff State of Arizona, ex rel Thomas C. Horne, Attorney General ("Plaintiff"). Plaintiff's opposition to the motion to stay is at docket 16 and Defendants' reply is at docket 17. Defendants' response to the motion to remand is at docket 19 and Plaintiff's

1 reply is at docket 22. In addition, the United States filed a notice at docket 18 asking
2 the court to take into account its interests pursuant to 28 U.S.C. § 517. Defendants
3 responded to the United States at docket 21. Oral argument was requested by
4 Defendants. However, the court finds the parties' papers to be adequate and
5 concludes that oral argument would not be of assistance to the court.
6

7 **II. BACKGROUND**

8 The parties are familiar with the facts and circumstances giving rise to the
9 pending lawsuit and to similar lawsuits in other jurisdictions. The court finds it
10 unnecessary to set out more than a brief summary here. Plaintiff filed this lawsuit in
11 Maricopa County Superior Court on February 5, 2013. The gravamen of Plaintiff's
12 claim is captured in the first paragraph of the complaint:
13

14 This lawsuit seeks redress for [Defendants'] unlawful business practices
15 of systematically and intentionally misrepresenting that its analysis of
16 structured finance securities was objective, independent and not
17 influenced by either S&P's or its clients' financial interests. These
18 representations were untrue and S&P knew they were untrue.¹

19 Alleging that Defendants violated the Arizona Consumer Fraud Act, A.R.S. 1521, *et*
20 *seq.*, Plaintiff asks the court for an award of restitution, imposition of civil penalties, an
21 award of fees and costs, and equitable relief to prevent Defendants from engaging in
22 such practices in the future.² Plaintiff does not advance any claim which it identifies as
23 arising under federal law. In most situations, claims under the Arizona statute could not
24 be heard in federal court on the basis of federal question jurisdiction.

25
26 ¹Complaint, doc. 1-1, ¶1.

27 ²*Id.*, ¶ 12.

1 On the other hand, it is clear from the complaint that the conduct forming the
2 basis for the lawsuit was not limited to Arizona: "S&P represents to investors,
3 government regulators and other consumers, including those in Arizona, that its
4 analysis of structured financial securities is independent, objective and free from
5 outside influence."³ Moreover, the complaint frequently alludes to Defendants' role in
6 the national and international financial marketplace, and points to alleged problems
7 such as "rating shopping" and an underlying drive for enhanced revenues which clearly
8 apply to a much wider market than Arizona. It is also true that very similar lawsuits
9 have been filed by several Attorneys General in locations seeking recovery based on
10 their own consumer fraud laws. This court is aware of such lawsuits in the following
11 jurisdictions: Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Idaho,
12 Illinois, Iowa, Maine, Mississippi, Missouri, North Carolina, Pennsylvania, South
13 Carolina, South Carolina, Tennessee, and Washington.

14
15
16 Defendants removed the case to this court on federal question grounds. In the
17 removal petition, Defendants contend that Plaintiffs' claims "necessarily raise" an issue
18 of federal law which is substantial and disputed. They go on to assert:

19
20 In particular . . . The claims that Plaintiff seeks to assert together with a
21 wave of parallel cases, (i) threaten to disrupt and supplant a complex and
22 exclusive federal regulatory scheme enacted by Congress and (ii) require
23 the evaluation and adjudication of the scope and nature of that scheme in
order to determine whether relief sought by the State is available to it and
consistent with the United States Constitution.⁴

24 Defendants note that S&P is a rating organization registered with the Securities and

25
26 ³*Id.*, ¶ 63.

27 ⁴Notice of Removal, doc. 1 at 2.

1 Exchange Commission and allege its ratings and those of other registered entities
2 constitute “integral components of the broader federal financial regulatory scheme.”⁵

3 III. DISCUSSION

4
5 At first blush it might seem that because the complaint pleads only a state law
6 claim there could be no federal question jurisdiction. However, the Supreme Court has
7 recently re-iterated in *Gunn v. Minton*⁶ that there is a small class of cases in which state
8 law claims support the exercise of federal question jurisdiction. The Court wrote:

9 [F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1)
10 necessarily raised, (2) actually disputed, (3) substantial, and (4) capable
11 of resolution in federal court without disrupting the federal-state balance
approved by Congress.⁷

12 Confronted with a motion to stay consideration of a motion to remand while
13 awaiting a JPML ruling on a request to transfer, district courts have applied a three part
14 test articulated in *Conroy v. Fresh Del Monte Produce Inc.*⁸ The first part of the test
15 requires the court to have a preliminary look at the merits of the remand motion.
16 Second, the court should consider whether the question of jurisdiction is difficult
17 factually or legally. Finally, the court should consider whether the jurisdictional issue is
18 identical or very similar to the jurisdictional issue raised in other cases which have been
19 or appear likely to be transferred for handling pursuant to JPML procedures.
20
21

22 The court has considered the parties’ briefing as well as the Notice by the United
23

24 ⁵*Id.* at 3-4.

25 ⁶ ___ U.S. ___, 133 S. Ct. 1059 (2013).

26 ⁷133 S. Ct. at 1065.

27 ⁸325 F.Supp.2d 1049 (N.D. Cal. 2004).

1 States and Defendants' response to the Notice. Having done so, the court finds the
2 briefing amply demonstrates that determining whether the requirements for federal
3 jurisdiction articulated in *Gunn* are met in the case at bar would be factually complex
4 and involve difficult questions of law. Finally, the court finds that the case at bar is very
5 similar to several others in which the trial court entered a stay. The cases include two
6 others within the Ninth Circuit, *Washington v. The McGraw-Hill Companies, Inc., et al.*,⁹
7 and *Idaho v. The McGraw-Hill Companies, et al.*¹⁰ There are several other district court
8 decisions which reached the same conclusion cited and briefly discussed in the
9 Washington and Idaho cases.
10

11
12 **V. ORDER FOR STAY AND ORDER TO CEASE TRACKING DOCKET 15**

13 For the reasons above, the motion to stay at docket 4 is **GRANTED**. This matter
14 is **STAYED** until twenty-one (21) days after the JPML rules on the request to transfer
15 the case. The Clerk of Court will please cease tracking the motion to remand at docket
16 15. If the JPML does not order transfer of this case, then upon the filing of a Notice by
17 Plaintiff, the Clerk will then please resume tracking the motion at docket 15 for decision
18 by this court.
19

20 DATED this 3rd day of June 2013.

21
22 /s/
23 JOHN W. SEDWICK
24 UNITED STATES DISTRICT JUDGE
25

26 ⁹Case No. C13-0398-JCC (W.D. Wash. 2013).

27 ¹⁰Case No. 1:13-cv-108-BLW (D. Id. 2013).